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MONTANA LEGISLATIVE HISTORY

Chapter 785 19 91

Bill H 391 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 30	✓ C	Hearing Date(s)	Mar 08	✓ C
	Feb 08	✓ C		Mar 16	✓ C
		C			C
		C			C
Date Out	Feb 08	✓ C		Mar 16	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

Free Conference Committee

✓ Apr 10

4/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 401	EFFECTIVE DATE: 4/09/91	

HB 391 INTRODUCED BY DARKO, ET AL.
CLERGY TO REPORT CHILD ABUSE

1/24	INTRODUCED		
1/24	REFERRED TO JUDICIARY		
1/25	FIRST READING		
1/30	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	86	14
2/15	3RD READING PASSED	85	12
	TRANSMITTED TO SENATE		
2/16	FIRST READING		
2/16	REFERRED TO JUDICIARY		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/18	2ND READING CONCURRED	48	1
3/19	3RD READING CONCURRED	46	2
	RETURNED TO HOUSE WITH AMENDMENTS		
3/23	2ND READING AMENDMENTS NOT CONCURRED	83	4
3/23	FREE CONFERENCE COMMITTEE APPOINTED		
4/10	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/12	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	93	4
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	85	9
	SENATE		
3/28	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/17	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	2
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 785	EFFECTIVE DATE: 10/01/91	

HB 392 INTRODUCED BY HOFFMAN
REQUIRING AN ORGANIZATIONAL MEETING OF COUNTY TAX APPEAL BOARDS
BY REQUEST OF BOARD OF STATE TAX APPEAL

1/25	INTRODUCED		
1/25	REFERRED TO TAXATION		
1/25	FIRST READING		
2/06	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	89	2
2/12	3RD READING PASSED	95	2
	TRANSMITTED TO SENATE		
2/13	FIRST READING		
2/13	REFERRED TO LOCAL GOVERNMENT		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		

HOUSE BILL NO. 391

INTRODUCED BY Darko Zitz Holly Etchart Stella Jean Hamer Cock Merrill Selya Brush Dave Brown Carey

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCLUDE CLERGY IN THE LIST OF PERSONS REQUIRED TO REPORT SUSPECTED CHILD ABUSE; AND AMENDING SECTION 41-3-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of family services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; ~~or~~

(g) a peace officer or other law enforcement official; or

(h) clergy.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) ~~No~~ A person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege. Subsection (2)(h) is not intended to interfere with the practice of religion.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence

INTRODUCED BILL HB 391

of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 30, 1991, at 8:06 a.m.

ROLL CALL

Members Present:
Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB #391
CLERGY TO REPORT CHILD ABUSE

Presentation and Opening Statement by Sponsor:

REP. DARKO, HOUSE DISTRICT 2, stated this bill is an act to include clergy in the list of persons required to report suspected child abuse. There are a lot of people in today's society who are involved with children and sometimes a pastor or a church is the only outside contact in which a child has to confide. This bill does not want to interfere with the church's practice of religion. The purpose of the bill is to intercede on the behalf of the child, where there is a danger to the child. A

lot of pastors counsel in addition to their pastoral/religious duties. This is a good way for people to work through some of their problems. There is a double standard, because you have people who are counselors and have to report and church people that counsel are not required to report.

Proponents' Testimony:

Gayle Sandholm, Methodist Minister, Helena, stated he came today to support this bill, doing so being mindful of the difficultly of all professions that respect confidentiality. It is crucial that professionals who see people behind office doors, respect the information that they receive and they do not share that information publicly. There are times when a professional needs to bypass that confidentiality because of a person's life being in danger. This is a difficult dilemma. How does one respect the confidentiality one receives and at the same time take into the account the life of a person where there is a clear and present danger to their life? This legislation presents that dilemma but I am in support of it, because I believe that abuse and/or neglect presents a clear and present danger to their life.

Ann Gilkey, Legal Council, Department of Family Services, gave written testimony in favor of HB #391. **EXHIBIT 1**

Opponents' Testimony:

Doug Kelley, Pastor, Helena Community Church, stated we are going to be backed into a process of breach of confidentiality. People come to a pastor or a priest and expect to be able to confide in us without worrying about confidentiality. It is unlike the social worker relationship, peace officer relationship, or the teacher relationship. People come to the confessional and pour out their souls and they come to repent. In this legislation we are saying the clergy should be included in persons required to report suspected child abuse and then in subsection (2) (h) it says "it is not intended to interfere with the practice of religion". I would submit to you that this is absurd. You cannot include us and at the same time say it will not interfere with our practice. Part of the practice of religion is confidentiality. To mandate that you are going to include clergy in all mandatory reporting you are going cause a tremendous conflict between the church and the state.

Sheldon Schearer, Pastor, stated he feels no one would not inform someone about a child being abused. We are coming to the point to breech of confidentiality and also the problem of church and state conflict. One of the things we take pride in here in Montana, is we have the opportunity of freedom and I believe we are causing problems when you get into that area. Most men of God are going to take those steps to insure a good life style for our little children and make sure they are not neglected or abused.

Dr. Richard Dion, Fairview Baptist Church, Great Falls, stated he feels the ministry is on trial today. There is not any pastor that is for child abuse. Pastors deal with families and still this area of confidentiality has not come up in all the years I have been a pastor. If there is a real problem, we will report it. Putting us under the obligations of reporting is not reasonable. Being a pastor is not a profession it is a vocation. I think this bill is ludicrous and the laws we already have in the state of Montana are sufficient.

Kenneth Moore, Pastor, First Christian Church, stated there has been occasions when I have observed child abuse that I have learned of such a situation and in each case I have reported it. I feel very strongly that child abuse is a problem we need to look at very seriously in our society to protect children. On the other hand, one basic foundation of our constitution is Freedom of Religion. By including clergy in this listing in the law would undermine that basic freedom. On that basis, I recommend this bill not pass.

Bryan Asay, Staff Attorney, Biblical-Legal Foundation, stated the committee should realize how difficult it is to stand in opposition to this bill because of the topic. There is always the fear that people will look at you and assume you are not concerned about the children as they should be. The church is in the business of protecting children and have been in that business much longer than the state of Montana. There are times when a horror story of this or that cult does something that is ridiculous or unscriptural and is not supportable by the word of God. Those horror stories become the basis for action in the legislature. "Unfortunately, I think that is what we have here today. I have not heard anybody complain about the church as an organization turning its back on child abuse or protecting child abusers or concealing abused children." The church is set in place to protect the children. The pastor is often called the shepherd of the church. Pastors do not counsel in addition to their role as a pastor, part of their job is being a counselor.

Bill Driscoll, Lawyer for Catholic Diocese, Helena, stated he is reluctant to rise in opposition of this bill because I understand the purpose it intends to accomplish and at that value level we can agree with the purpose of the bill. The unique problem this legislation creates for catholic priests arises from the fact that the Roman Catholic church has the Code of Canon Law. This law says a priest is obligated to maintain the utter confidentiality of anything a priest learns in confession. The sanction within the church, for a priest who discloses outside confession information learned, is excommunication. There is no way a priest could comply with any sort of disclosure requirement.

Questions From Committee Members:

REP. TOOLE asked **Mr. Driscoll** if given the inherent conditions that we list here, that there might be someway to modify what the statute requires by the way of details in the reports that are submitted by the enumerated professionals? **Mr. Driscoll** said he looked at the statute MCA 26-1-804 and that basically is an evidentiary statute that would prohibit a clergyman from testifying in court. An objection to a questions calling for this type of testimony would be sustained in court proceeding where a person is testifying under oath. " This legislation is not at that stage and I don't know that the statutory provisions defines any of it."

REP. CLARK asked **Mr. Driscoll** if he knows if the priest acting in a role of a counselor is bound by the same rules as he is in the confessional? **Mr. Driscoll** said the Canon Law provision are unique to the confessional setting. It is hard to separate when the counseling ends and the confession begins between a priest and a parishioner.

REP. CLARK asked **REP. DARKO** if she could answer the same question? **REP. DARKO** said, "not being a practicing Catholic, I wouldn't say that the confessional is the same setting as counseling." If someone comes into talk to their priest about a problem it is different than going to confession and asking to have them absolve their sins.

REP. WHALEN asked **REP. DARKO** how does this statute work presently in a situation such as yours being a teacher? **REP. DARKO** said the way it works is if we suspect child abuse we have an obligation to report it after we carefully and cautiously observe the situation to be sure it is happening. We don't jump right away. A child hides these situations and it is hard to prove they are being abused.

REP. JOHNSON asked **Pastor Schearer** if he takes the same action in reporting child abuse as Rep. Darko did as being a teacher? **Pastor Schearer** said if he suspects child abuse the church will step in and see if they can resolve the problem and if they can't they will report it to the proper authority.

Closing by Sponsor:

REP. DARKO stated there are other states that have this legislation and, "I am not sure what states do but I will check into it and have that information for executive session. I feel there isn't anyone that should not be required to report child abuse." It is in the best interest to protect the children.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 1-30-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/	/	
REP. WILLIAM BOHARSKI	/	/	
REP. DAVE BROWN	/	/	
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/	/	
REP. VERNON KELLER	/		
REP. THOMAS LEE	/	/	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/	/	
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 1
DATE 1-30-91
HB 391

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 391
AN ACT TO INCLUDE CLERGY
AS MANDATORY REPORTERS OF CHILD ABUSE OR NEGLECT

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services supports HB 391. Child abuse and neglect is a harsh reality for many young Montanans. As concerned citizens, we must all do what we can to stop the abuse of children. Montana law provides that certain professional persons are required to report child abuse if they know or have reasonable cause to suspect that a child is abused or neglected. This requirement extends to medical personnel, school personnel, peace officers, social workers, day care providers and foster parents.

Mental health professionals, such as counselors, are specifically named as persons who must report. When clergy learn of, or come to suspect child abuse, it is typically through counseling. There is no reason to exclude clergy from the mandatory reporting requirement. Like other professionals involved in counselor-client relationships, the clergy should be called upon to report. The Department of Family Services urges your support of HB 391.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB#391

DATE 1-30-91 SPONSOR(S) Rep. Darko

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bryan Asay	Biblical Legal Foundation		X
John Madsen	Self	X	
Ann Gilkey	Dept. Family Services	X	
Doug Kelley	Mt Helena Community Church		X
Kenneth W. Moore	First Christian Church		X
Richard Dion	Fairview Bapt Church Gt Falls - Mt		X
S.C. Schearer	Heritage Baptist Church Gt Falls, MT		X
Gayle Sandholm	SELF	X	
Judith Carlson	MT Chp. NASW	X	
John L. Ortiveri	Mt Catholic Conf		X
Bud Driscoll	Self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

people out of jail for non-moving offenses. These people could be fined but not jailed. Usually these offenses are so minor, the jail term is usually not incurred anyway.

Proponents' Testimony: none

Opponents' Testimony:

Pat Bradly, Montana Magistrates Association, gave written testimony opposing SB 39. EXHIBIT 5

Nancy Sabo, Montana Magistrates Association, gave written testimony opposing SB 39. EXHIBIT 6

Questions From Committee Members:

REP. JOHNSON asked SEN. HALLIGAN how repeat offenders will be dealt with under this bill? SEN. HALLIGAN stated that the non-moving offenses that this bill deals with are so small that there usually isn't repeat offenders.

REP. BROOKE asked SEN. HALLIGAN if he would be agreeable to an amendment regarding community service in section 2 of SB 39? SEN. HALLIGAN stated that community service has to be mandatory alternative sentencing for people that cannot pay their fines. He stated he would be agreeable to that amendment.

Closing by Sponsor:

SEN. HALLIGAN stated that the cost of keeping the non-moving offender in jail is prohibited and if there is a way to make sure they will be kept out of jail, instead of spending $30-$50 a day, a serious look should be taken at the situation.

EXECUTIVE ACTION ON HB 391

Motion: REP. DARKO MOVED HB 391 BE RECONSIDERED.

Discussion: REP. DARKO stated that Rep. Rice had some concerns that she felt she cleared up with the proposed amendment.

Vote: Motion passed with Rep. Brown voting no.

Motion: REP. DARKO MOVED HB 391 DO PASS.

Motion: REP. DARKO moved to amend HB 391. EXHIBIT 7

Discussion: REP. DARKO stated that her amendment would replace a previous amendment made to HB 391.

REP. BROWN stated that the previous discussion on the bill centered around what the definition of "confessional" was and

what constituted that in any of the religions. He stated that he felt the amendment said there isn't a difference between the "confessional" and "Mr. Routine doing business" because professional capacity is a 24 hour, 7-day a week job. He asked how that distinction is made?

REP. DARKO stated that if **REP. BROWN** would like to tighten up the word professional she would be agreement with that.

REP. BROOKE stated that she opposes "professional capacity" because that phrase makes the bill far too broad because it includes counseling. She stated that many of the clergy people testified that they were not in a profession but rather in a vocation. She felt the phrase would conflict with what the clergy's intent is.

REP. WHALEN asked **REP. DARKO** if the main reason she wants to get this into statute is to get clergy to report any child abuse or related crimes unless it falls into this area?

REP. DARKO stated that the word "professional" could be substituted for something else. She stated that she had trouble with professional but could not come up with a better word at the time she wrote her amendment.

REP. RICE stated that the term "professional capacity" was not changed and that it was referenced in the original amendment.

REP. DARKO stated that she felt that the word "spiritual should be added for the phrase to read "spiritual professional capacity".

Motion/Vote: **REP. DARKO** moved to amend HB 391 by adding the word "spiritual" to her amendment and add the words "or neglect", after the words "abuse". Motion carried 18 to 2 with Rep's: Gould and Brooke voting no.

Motion/Vote: **REP. DARKO MOVED HB 391 DO PASS AS AMENDED.** Motion carried 15 to 5 with Rep's: Whalen, Gould, Boharski, Nelson and Measure voting no.

EXECUTIVE ACTION ON SB 57

Motion: **REP. JOHNSON MOVED SB 57 BE CONCURRED IN.**

Discussion: **REP. MEASURE** stated that SB 57 is probably a really good bill for felonists. He felt that the bill is no good for the defendant. He stated that the defendant needs protection from the judge and he will have more self-esteem by being able to stand before the judge and plead his case.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-8-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 7
DATE 2-6-91
HB 391

(b) A clergy person or priest is not required to make a report under this section if:

i) the knowledge or suspicion of the abuse arose from a statement or confession made to the clergy or priest in his/her professional capacity;

ii) under law, church doctrine or established church practice requires the clergy or priest keep the statement or confession confidential; and

iii) the person who made the statement or confession does not consent to the disclosure by the clergy or priest.

) applies

is convinced that as those issues reach the Supreme Court, they will be considered seriously and gravely.

Closing by Sponsor:

Senator Crippen responded to the remarks made by Senator Svrcek concerning the judiciary lobbying members of the Legislature. He said that fact demonstrates the beauty and uniqueness of the balance between the three branches of government. Senator Crippen added that, as far as lawyers are concerned and who they represent, it is his understanding that good lawyers represent the law ("the law is their soul-master"), and that this is very consistent. He commented that any law school graduate recognizes that fact.

Senator Crippen advised the Committee that, during the nomination process, a number of people were pleased to write letters to the Governor concerning the person of Justice Gray. He said he was trying to say how fortunate the people of Montana are to have her as a justice, and that she most certainly deserves that honor and the people deserve her.

EXECUTIVE ACTION ON SENATE RESOLUTION 6

Motion:

Senator Crippen made a motion that SR 6 DO PASS.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendment.

Recommendation and Vote:

The motion made by Senator Crippen carried unanimously.

HEARING ON HOUSE BILL 391

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, told the Committee HB 391 amends the law to include clergy in the list of persons required to report child abuse and neglect. She stated that, sometimes, this is the only contact outside of the family, but she also did not want to interfere with canon of churches.

Representative Darko explained that her pastor provides family counseling. She stated that Montana law requires that anyone aware of child abuse is required to report it, and cited a situation in Eastern Montana where a boy died as a result of punishment in a church school. She said the pastor was aware of the incident and failed to report it.

Representative Darko advised the Committee, that as a teacher, it is painful to report child abuse or neglect, and that it is taken very seriously. She said she did not want to see government as a big brother, but did not want to see child abuse either.

Representative Darko stated that amendments have been proposed by Representative Rice with her concurrence. She reported that the American Association of Pastoral Counselors is examining ethics in this area now, and is moving toward the obligation of reporting child abuse.

Proponents' Testimony:

Ann Gilkey, Legal Counsel, Department of Family Services (DFS), read from prepared testimony in support of HB 391 (Exhibit #1). She said DFS is aware of the amendment, and believes that it takes care of Departmental concerns.

Opponents' Testimony:

Ken Peterson, Billings attorney representing the Church of Jesus Christ of Latter Day Saints (LDS), told the Committee he is a lay officer (State President of Montana). Mr. Peterson read from prepared testimony in opposition to HB 391 (Exhibit #2). He said the Church has 7.3 million members worldwide and about 34,000 members in Montana, or 4.2 percent of the state's population.

Mr. Peterson read from the Gospel of Matthew, New Testament, concerning the attitude of Jesus toward little children. He said that is also the attitude of the LDS Church. Mr. Peterson stated that the purpose and the desired end of HB 391 is laudable, but he believes requiring the clergy to report child abuse will contribute to the problem. He said people will stop coming to their clergy to address the problem, as many times this information comes from family members other than the perpetrator.

Mr. Peterson stated he believes the child would be better off if the Church helps to change the lives of the people he or she lives with, so the child will not continue to be abused. He further stated that if people won't come to the clergy, these matters will be left to the state.

Mr. Peterson told the Committee he believes that Montana and U.S. Constitutional issues are also involved, guaranteeing free enterprise of religion.

Brian Asay, Montana Biblical Legal Foundation, told the Committee he respectfully opposes this legislation, and finds it difficult to do so when the bill is aimed at preventing child abuse. He explained that the bill appears to be more reasonable now than in its original form, but he still opposes it in principle.

Mr. Asay stated the danger is in the state entangling itself in the affairs of the church. He commented that the church has been around much longer than the State of Montana, and said he believes the church has been protecting families that much longer, too. Mr. Asay asked to whom a penitent would go, and commented that Representative Darko appears to be sensitive to corporal punishment.

Mr. Asay said requiring the clergy to report child abuse would be tantamount to requiring all people about to commit a crime to report it. He said he believes Mr. Peterson shared basic reasons, but also believes the legislation, as it stands, is not useful and is not needed. Mr. Asay commented that if HB 391 passes, the court would then have to determine what is doctrine. He said the Catholic Church is okay, as it has canon, but other churches do not. Mr. Asay respectfully asked that the Committee kill HB 391.

Questions From Committee Members:

Chairman Pinsoneault asked Ken Peterson if he were suggesting that a perpetrator should be protected behind the shroud of the clergy. Mr. Peterson replied he was not saying this, and stated the bill does not address situations other than a Catholic going to a priest to confess a crime. Mr. Peterson further responded that he believes perpetrators should be punished.

Senator Rye commented that there is a problem in defining clergy, as some churches use lay clergy. Representative Darko replied she was not certain, and said that clergy is very well defined in some churches and not in others.

Senator Halligan asked Ken Peterson if he believed clergy should not report an instance where a spouse comes to them to discuss abuse by the father. He cited a case where an LDS member, now in prison, was defended by the LDS Church during the entire time he was being prosecuted. Mr. Peterson replied that the Church believes it is there to assist in raising families and to increase their spirituality.

Senator Towe asked if lay people in the LDS Church would fall within the definition of clergy. Mr. Peterson replied the bill does not define clergy at all, but his position would probably be that of clergy.

Senator Towe asked what the problem would be if confession were made in a spiritual capacity. Mr. Peterson replied his concern is that the role of clergy is to bring a person to

repentance. He commented that if no one comes to their clergy, the clergy can't help anyone.

Senator Towe asked Representative Darko to respond, and said he believes this is a valid point. Representative Darko referred to the amendment on page 3, and said she and Representative Rice discussed it and felt it would cover the situation. She advised Senator Towe that a confidential statement would be exempt.

Senator Towe asked how spirituality would be defined in a professional capacity. Representative Darko replied it would be defined in the biblical realm. She said most pastors trained to counsel are encouraged to state at the outset whether the counseling is of a spiritual nature or not. Representative Darko told Senator Towe she believes the bill sets this out.

Senator Towe stated that, as Clerk of the Billings Friends, he is probably the most senior of the Billings Quakers, who have no clergy. He said people in the Church would probably come to him in such instances. Representative Darko replied the Senator Towe would need to use his own judgment.

Senator Mazurek asked Ken Peterson why he viewed a spouse reporting child abuse as a problem. Mr. Peterson said he was concerned about leaving this up to a court to construe language. He stated there is no private counseling in the LDS Church, so there is no dual role.

Closing by Sponsor:

Representative Darko told the Committee she paraphrased language from Utah for the bill. She commented that the Catholic Church did not oppose the bill, and said she does believe in separation of church and state, but also believes in narrowly defining the issue of child abuse. She asked that Senator Fritz carry the bill.

HEARING ON HOUSE BILL 212

Presentation and Opening Statement by Sponsor:

Representative Ben Cohen, District 3, said HB 212 is a students' freedom of expression bill, but is a misnomer, in a way. He read the First Amendment from the U.S. Constitution and Article 2, Section 7 of the Montana Constitution concerning freedom of speech, and commented that Montana goes beyond the U.S. Constitution in that it pertains to the rights of persons, not adults (Exhibit #3).

Representative Cohen said the 1988 U.S. Supreme Court in Hazelwood, Missouri, overturned a body of case law in which students had rights to express themselves. He commented that the Committee has probably received letters from school administrators

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 8 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Exhibit 1
March 91
HB 391

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

March 8, 1991

TESTIMONY IN SUPPORT OF HB 391
AN ACT TO INCLUDE CLERGY
AS MANDATORY REPORTERS OF CHILD ABUSE OR NEGLECT

Submitted by Ann Gilkey, Legal Counsel
Department of Family Services

The Department of Family Services supports HB 391. Child abuse and neglect is a harsh reality for many young Montanans. As concerned citizens, we must all do what we can to stop the abuse of children. Montana law provides that certain professional persons are required to report child abuse if they know or have reasonable cause to suspect that a child is abused or neglected. This requirement extends to medical personnel, school personnel, peace officers, social workers, day care providers and foster parents.

Mental health professionals, such as counselors, are specifically named as persons who must report. When clergy learn of, or come to suspect child abuse, it is typically through counseling. There is no reason to exclude clergy from the mandatory reporting requirement. Like other professionals involved in counselor-client relationships, the clergy should be called upon to report.

The Department of Family Services urges your support of HB 391.

Exhibit 2
3/8/91
HB 391

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 8th day of March, 1991.

Name: Ken Peterson

Address: 2906 3rd Ave North

Billings, Montana

Telephone Number: 252-6679

Representing whom?

The Church of Jesus Christ of Latter-day Saints

Appearing on which proposal?

HB 391

Do you: Support?____ Amend?____ Oppose? X

Comments:

See written material provided

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT 12
8 Mar 91
HB 391

CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS PRESENTATION TO THE SENATE JUDICIARY COMMITTEE ON HB 391

The representations made in this paper are made for and on behalf of the members of the Church of Jesus Christ of Latter Day Saints who live in the State of Montana. In 1991 there are 34,000 members. 4.2% of the Montana voting population are members of the Church of jesus Christ of Latter Day Saints.

WE OPPOSE HB 391.

A consideration of the background of our position is probably important for a complete understanding of why we oppose HB 391.

In Matthew 18:1-6, the Lord Jesus Christ stated the following:

1. . . . who is the greatest in the kingdom of heaven?

2. And Jesus called a little child unto him, and set him in the midst of them,

3. And said, Verily I say unto you, Except ye be converted, and become as little children, ye shall not enter into the kingdom of heaven.

4. Whosoever therefore shall humble himself as this little child, the same is greatest in the kingdom of heaven.

5. And whoso shall receive one such little child in my name receiveth me.

6. But whoso shall offend one of these little ones which believe in me, it were better for him that a milstone were hanged about his neck, and that he were drowned in the depth of the sea.

Those verses set forth hereinabove illustrate the position in which we hold little children in our religion.

However, in the long run, we believe that our clergy leaders can be of greatest assistance to those little children if they are able to help change the lives of those persons who are responsible to raise and nurture them.

Exhibit 2
3/8/91
HB 391

Elder David B. Haight, a member of the Council of the Twelve Apostles which is one of the presiding Councils of the 7.3+ million world wide church, quoting from President Joseph F. Smith, the Fifth President of the Church, stated the following:

> Our mission is to save men, wrote Joseph F. Smith. We have been laboring all these . . . years . . . to bring men to a knowledge of the gospel of Jesus Christ, to bring them to repentance, to obedience to . . . God's law . . . to save them from error, . . . to turn away from evil and to learn to do good.

HB 391 is in direct conflict and interferes with that mission. In addition, it interferes with the exercise of religion guaranteed by the First Amendment of the United States Constitution and Article II, Section 5 of the Montana Constitution.

The Bill in its present amended form makes certain exceptions but only exceptions for the suspected perpetrator and only if the clergy person or priest comes to a knowledge of the situation from a statement or confession being directed to the clergy person. It appears that the language does not include an exception for the wife or husband of the suspected perpetrator, sibling or a grandparent who comes to the clergy person or priest to inform him or her with the purpose of requesting intervention or initiation of the repentance process.

If the information comes from some other source and if, under the law, the clergyman has to report that information, then there are going to be no persons coming to that clergy person and we will not be able to fulfill our religious mission of making bad men and women good and good men and women better and to help and assist them to turn away from evil and to learn to do good.

It would be better for the legislature to stay out of the religion area completely and not encroach on our religious mission

EXECUTIVE ACTION ON HOUSE BILL 466

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Pinsoneault stated that Senator Towe's amendments are good ones (Exhibits #3 and #4).

Senator Towe made a motion that the amendments to HB 466 be approved.

Senator Doherty asked how the amended bill would be different from what exists now. Senator Towe replied his amendments mandate.

Senator Doherty advised the Committee he talked to Dr. Frank Sietz from Bozeman, and said he believes the concerns of the Department of Institutions are valid.

Senator Crippen said he believes HB 466 is a dumb bill. He asked if a prisoner could petition the court to amend the judgment to allow parole, if a judge says there will be no parole. He commented that if this is put into statute, there will be no discretion.

Senator Crippen made a substitute motion that HB 466 DO NOT PASS. The motion failed 6-6 in a roll call vote (attached).

Recommendation and Vote:

Senator Crippen made a motion to TABLE HB 466. The motion carried 7-5 with Senator Halligan changing his vote.

EXECUTIVE ACTION ON HOUSE BILL 391

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Mazurek made a motion that Senator Towe's amendments be approved (Exhibit #5).

Senator Towe explained that the amendments set forth that a statement is to be protected and cannot be part of a report if it

was confidentially communicated. Senator Towe further explained that it also sets up, as a separate basis, that religious canon, doctrine or practice does not require that kind of reporting or communication. He said there must be compliance on all three points or (C) would apply.

The motion made by Senator Mazurek carried unanimously.

Senator Halligan commented that he believes subsection (3) is covered under subsection (1) on page 2 of the bill.

Senator Towe replied that he believes this language makes it a little tighter than Louisiana language.

Senator Yellowtail said he shared Senator Halligan's concerns.

Recommendation and Vote:

Senator Towe made a motion that HB 391 BE CONCURRED IN AS AMENDED. The motion carried with all members voting aye except Senators Halligan, Rye, and Yellowtail, who voted no.

EXECUTIVE ACTION ON HOUSE BILL 212

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion to amend the bill on page 2, following line 20, by inserting "(d) is in violation of a person's right of privacy or will not otherwise be protected by the U.S. Constitution". He said this would add slander, libel, obscenity, and clear and present danger.

Chairman Pinsoneault told the Committee that if the U.S. Constitution is bad and they want to make it like Montana's, then they should vote to open up the U.S. Constitution. He commented that in 1987, he was one of two Senators to vote to open it up.

Senator Rye stated the bill creates as many problems as it solves.

Senator Rye made a substitute motion that HB 212 DO NOT PASS.

Chairman Pinsoneault stated this would then place substantial responsibility on the person making the decision, as to what constitutes obscenity and clear and present danger.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 16 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 391 (third reading copy -- blue), respectfully report that House Bill No. 391 be amended and as so amended be concurred in:

1. Page 2, line 16.
Following: "(8)"
Insert: "or (4)(c)"

2. Page 2, line 25.
Following: "HIS"
Strike: "SPIRITUAL PROFESSIONAL"
Following: "CAPACITY"
Insert: "as a clergyperson or priest"

3. Page 3, lines 1 through 3.
Following: "(II)" on line 1
Strike: remainder of line 1 through "CONFIDENTIAL" on line 3
Insert: "the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of his church or congregation"

4. Page 3, line 7.
Following: line 6
Insert: "(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice."

Signed: _____
Richard Pinsoneault, Chairman

3-16-91
Amd. Coord.

3/16 11:30
Sec. of Senate

EX #3
16 Mar
HB 391

Amendments to House Bill No. 391
Third Reading Copy (Blue)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 11, 1991

1. Page 2, line 16.
Following: "(B)"
Insert: "or (4)(c)"

2. Page 2, line 25.
Following: "HIS"
Strike: "SPIRITUAL PROFESSIONAL"
Following: "CAPACITY"
Insert: "as a clergyperson or priest"

3. Page 3, lines 1 through 3.
Following: "(II)" on line 1
Strike: remainder of line 1 through "CONFIDENTIAL" on line 3
Insert: "the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of his church or congregation"

4. Page 3, line 7.
Following: line 6
Insert: "(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice."

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 391

Call to Order: By Chairman Tom Towe, on April 10, 1991, at 12:00 noon.

ROLL CALL

Members Present:
Senator Tom Towe, (D)
Senator Lorents Grosfield (R)
Representative Paula Darko, Chair (D)
Representative Jim Rice (R)
Representative Vivian Brooke (D)

Members Excused:
Senator Mike Halligan (D)

Staff Present: Dorothy Quinn (Committee Secretary)

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

EXECUTIVE ACTION ON HOUSE BILL 391

Discussion:

Discussion centered around the words "spiritual professional" capacity wherein it was questioned whether there are two types of counseling - spiritual and secular. The consensus was that type of distinction would be difficult to make.

Senator Towe suggested as a compromise that the word "professional" be used. Representative Rice commented that the word "spiritual" is difficult to define.

Representative Darko stated that one of the things she wanted to do in this statute change was to make the clergy aware that they do have an obligation, and they are skirting on thin ice if they know child abuse is going on and they do not report it.

Senator Grosfield referred to Page 2, line 16, and asked if the word "or" should be "and". Senator Towe said that particular wording was at Senator Mazurek's request in order to make sure it is protected by Canon Law, and the "or" provides an alternative.

Senator Grosfield commented that he believes many pastors will welcome this as an excuse for them to come forward with information because they are now obligated by law.

Following further discussion, Representative Darko stated she believed the bill accomplishes what she was hoping to do.

Recommendation and Vote:

Representative Paula Darko made a motion that the House accede to the Senate amendments. Those in favor - 5; opposed - 0; (Halligan absent). MOTION CARRIED.

ADJOURNMENT

Adjournment At: 12:30 P.M.

TOM TOWE, Chairman

DOROTHY QUINN, Secretary

TT/dq

AG041091.SM2

ROLL CALL VOTE

Free Conf.

~~SENATE~~ COMMITTEE _____

Date 4/8/91 _____ Bill No. HB391 Time _____

NAME	YES	NO
SEN. GROSFIELD	X	
SEN. HALLIGAN		
SEN. TOWE	X	
REP. DARKO	X	
REP. BROOKE	X	
REP. J. RICE	X	

Dorothy Zumin
Secretary

SEN. TOM TOWE
Chairman

Motion: Rep. Darko made a motion that the House accede to the Senate amendments. In favor - 5, Opposed - 0

Free Conference Committee
on House Bill 391
Report No. 1, April 10, 1991

Mr. Speaker and Mr. President:

We, your Free Conference Committee on House Bill 391 met and considered House Bill 391 (reference copy -- salmon) and recommend that the House accede to the Senate amendments.

And this Free Conference Committee report be adopted.

For the House:	For the Senate:
Rep. Paula Darko, Chair	Sen. Tom Towe
Rep. Vivian Brooke	Sen. Lorents Grosfield
Rep. Jim Rice	Sen. Mike Halligan

ADOPT

REJECT

761406CC.HSF

ROLL CALL

FREE CONFERENCE COMMITTEE

DATE 4/12/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Sen. Grosfield	X		
Halligan			
Love	X		
Rep. Darko	X		
Brooke	X		
J. Rice	X		

Each day attach to minutes.